

(ii) The month in which you stop participating in the program for any reason (see § 404.327(b) for what we mean by “participating” in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

Exception to paragraph (c): In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

(d) If, after November 1980, you have a disabling impairment (§ 404.1511), you will be paid benefits for all months in which you do not do substantial gainful activity during the reentitlement period (§ 404.1592a) following the end of your trial work period (§ 404.1592). If you are unable to do substantial gainful activity in the first month following the reentitlement period, we will pay you benefits until you are able to do substantial gainful activity. (Earnings during your trial work period do not affect the payment of your benefit.) You will also be paid benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity during those succeeding months. After those three months, you cannot be paid benefits for any months in which you do substantial gainful activity.

(e) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, you may receive disability benefits on that basis for no more than 36 months regardless of the number of entitlement periods you may have. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefit payments were suspended for any reason. Benefits to your dependents may continue after the 36 months of benefits if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability.

The 36-month limit is no longer effective for benefits for months beginning after September 2004.

(f) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535 and your disability benefits are suspended for 12 consecutive months because of your failure to comply with treatment requirements, your disability benefits will be terminated effective the first month after such 12-month period. Benefits to your dependents may continue after the 12-month period if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability.

[44 FR 34481, June 15, 1979, as amended at 47 FR 31542, July 21, 1982; 47 FR 52693, Nov. 23, 1982; 49 FR 22270, May 29, 1984; 51 FR 17617, May 14, 1986; 60 FR 8145, Feb. 10, 1995; 68 FR 4704, Jan. 30, 2003; 70 FR 36505, June 24, 2005]

§ 404.317 How is the amount of my disability benefit calculated?

Your monthly benefit is equal to the primary insurance amount (PIA). This amount is computed under the rules in subpart C of this part as if it was an old-age benefit, and as if you were 62 years of age at the beginning of the 5-month waiting period mentioned in § 404.315(a). If the 5-month waiting period is not required because of your previous entitlement, your PIA is figured as if you were 62 years old when you become entitled to benefits this time. Your monthly benefit amount may be reduced if you receive worker's compensation or public disability payments before you become 65 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you attained full retirement age (as defined in § 404.409).

[68 FR 4704, Jan. 30, 2003]

§ 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continuous period of time during which you are disabled. If you become disabled, you may apply to have our records show how long your disability lasts. You may do this even if you do not qualify for disability benefits. If we establish a period of disability for you,

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the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all the following conditions:

(1) You have or had a disability as defined in § 404.1505.

(2) You are *insured for disability*, as defined in § 404.130 in the calendar quarter in which you became disabled, or in a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your period of disability begins and before the month in which it would end.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21930, May 16, 1983; 51 FR 10616, Mar. 28, 1986]

§ 404.321 When a period of disability begins and ends.

(a) *When a period of disability begins.* Your period of disability begins on the day your disability begins if you are insured for disability on that day. If you are not insured for disability on that day, your period of disability will begin on the first day of the first calendar quarter after your disability began in which you become insured for disability. Your period of disability may not begin after you have attained full retirement age as defined in § 404.409.

(b) *When disability ended before December 1, 1980.* Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month in which your disability ended.

(c) *When disability ends after November 1980.* Your period of disability ends

with the close of whichever of the following is the earliest—

(1) The month before the month in which you attain full retirement age as defined in § 404.409.

(2) The month immediately preceding your termination month (§ 404.325); or

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

(d) *When drug addiction or alcoholism is a contributing factor material to the determination of disability.* (1) Your entitlement to receive disability benefit payments ends the month following the month in which, regardless of the number of entitlement periods you may have had based on disability where drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535)—

(i) You have received a total of 36 months of disability benefits. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefits were suspended for any reason; or

(ii) Your benefits have been suspended for 12 consecutive months because of your failure to comply with treatment requirements.

(2) For purposes other than payment of your disability benefits, your period of disability continues until the termination month as explained in § 404.325.

[49 FR 22271, May 29, 1984, as amended at 60 FR 8145, Feb. 10, 1995; 65 FR 42782, July 11, 2000; 68 FR 4704, Jan. 30, 2003]

§ 404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

If because of a physical or mental condition you did not apply for a period of disability within 12 months after your period of disability ended, you may apply not more than 36 months after the month in which your disability ended. Your failure to apply within the 12-month time period will be considered due to a physical or mental condition if during this time—

(a) Your physical condition limited your activities to such an extent that